

# Exhibit 115



*Done*

December 22, 2014

To: Brad McCrea, Adrienne Klein, Erik Buehmann, John Bowers  
From: Doug Aikins  
Copy: Mark Sanders  
Subject: **Amendment #5 to BCDC Permit 2-02 ("Permit")**

Dear All:

This memo is intended to implement the two-part negotiated settlement of all outstanding issues pertaining to past interpretations and allegations of non-compliance with the Permit, Amendment #3, by correcting the following Permit text sections that have caused issues in the past. To tie this to recent correspondence, the two parts of the current negotiations are proposed in items #5 and #6 of my e-mail to Adrienne dated October 21, 2014. Adrienne responded generally favorably to this approach in item #2 of her reply e-mail dated October 24, 2014. If we can come to closure on the following Permit text corrections, the only outstanding issue will be resolution of past allegations of Permit non-compliance.

As requested, we have listed below the few remaining issues contained in the current draft of amendment 5. As you will see, most are changes newly added to the draft provided to staff last year. For clarity, and to provide itemized explanations of the following corrections, we have described the changes necessary, rather than annotating the Permit, but annotating the Permit should be fairly straightforward in view of these described Permit text changes.

**Attached Drawings**

The draft Amendment #5 includes a drawing which dates from 2003, which was rendered obsolete in 2006 by Amendment #3. Building locations, floating dock layout, boatyard, rowing center and retail areas are all erroneous in this drawing. The Amendment #3 drawings, which correctly show the construction phases, should be attached so that the Permit text and drawings match (to avoid confusion). These Amendment #3 drawings then will also match those recorded by BCDC with San Mateo County in 2006.

The draft drawing (number 2) usefully shows the phasing of public access, and we can either add a note to it ("This drawing is intended only to illustrate public access phasing") or alternatively, show public access phasing on a correct drawing.

**Page 4 Phase 3 para 1. "New Restroom"**

This new condition requires an additional restroom. In an earlier draft this was also added and later removed when it was shown that only one public restroom is required in the 2-02 Permit. This was formalized by letter from Andrea Gaut. While Westpoint Harbor plans additional public restrooms in the boatyard and retail area, it's not a requirement and the clause should be removed.

**Page 11 item 7 "Best Management Practices"**

The *Westpoint Harbor Marina Management and Operations Manual* was submitted and approved in May, 2007, and includes industry-standard Best Management Practices for marinas. Sections include a Green Marina Toolkit, Boater Education, Environmental Strategies and Emergency Response Procedures. Altering the Permit now, to require a second Commission approval of this manual is after-the-fact and not appropriate. This change should be deleted.

**Page 38 item K "Required Court Action"**

The Permit defines how illegal or unenforceable conditions are identified and how they could render the Permit null and void. This new draft language change materially alters the Permit and seeks to require a "court determination" on the legality or enforceability of Permit conditions. This is an unworkable requirement and would (for example) require litigation to arbitrate among federal, state and local regulatory agencies with conflicting conditions. The California Parks Division of Boating and Waterways, US Fish and Wildlife Service, Coast Guard, NOAA and the City of Redwood City already have advised BCDC staff that some Permit conditions violate requirements in areas where those agencies have primary jurisdiction. Moreover the Regional Water Quality Board, State Water Quality Board, State Lands



Commission and California Department of Fish and Wildlife previously objected to “BCDC actions which overstep its authority”. The original Permit language should not be changed as proposed.

**Page 10 Phase Two item f “Fuel Dock”**

Making the future fuel dock (“M” dock) open to pedestrian traffic has been agreed to. We should make clear, however, that while “M” dock is open to the public, it will become a “fuel dock” only when fuel tanks, dispensers and spill controls are installed (requiring special permits). This will prevent a repeat of the problem in which the phase 1A concrete ramp was construed as a “boat launch”, when in fact it becomes a boat launch only when landing docks, lighting, parking and fire protection are added in a later phase. Suggested language: “M” dock (“which will become the future fuel, pumpout and work dock...”).

Page 12 item 9 designates public access areas to be ADA compliant, and for “M” dock this is a costly change. The marina has purchased a standard (40’) gangway for M dock, which is installed on-site with underground utilities in place. ADA compliance requires a new 80’ gangway, relocated utilities and a new abutment design. While ADA Marina Rules exempt docks with fewer than 25 boats (such as “M” dock) from ADA requirements, Westpoint Harbor has agreed to make M dock publically accessible and will add the new gangway and reinstall utilities.

**Page 10, Phase Three a, f “Boardwalk”**

Conditions “a” and “f” are the same, and so one should be deleted. The boardwalk is a minimum 15’ wide and includes wider sections for patios and overlook decks, which are designed around the structures they serve such as restaurants and a coffee shop. We should add language stating that “the existing path will be displaced incrementally by the boardwalk as new structures are designed and built”. In all cases the new sections displacing the DG path will be wider and continuous, so that no loss of access occurs. This recognizes that the phases will not be built all at once.

**Page 17 item P1 “Liveaboard Reporting”**

This issue has been addressed in previous correspondence. The original reason for reporting “designated live-aboard” locations was tied to sewage management. Live-aboard locations required more frequent pump-outs. Once the system of pump-out at every slip (approved in 2006) was installed in 2008, there are no longer any “designated live-aboard” locations as originally envisioned in 2003. Moreover, the state requested a demonstration site of a “universal pump-out” system, and partially funded it, adding the additional incentive of



avoiding further reporting of “designated live-aboard” locations. This universal pump-out system has been installed, is fully operational, and removes any practical reason to report live-aboard locations.

Of greater concern is the fact that BCDC staff provided private and personal information about live-aboard families and individuals (names, addresses, and even account information) from other marinas to a third party. This is a violation of privacy protection and a serious data management breach, and it seems there are no mechanisms for privacy protection in place as required.

No marina in California with a universal pump-out system is required to report live-aboard locations, and the condition has been rendered moot by the 2006 approval of the universal pump-out system, and so should be either deleted or noted as moot.

**Page 32, G “Salt Pond Designation and Jurisdiction”**

As you know, the salt pond designation was discussed by the Commission when issuing the Permit in 2003, since it was a last-minute change (we are still “making formative policy decisions” was Will Travis’ explanation). With no factual evidence supporting a claim of salt pond jurisdiction, and because the “salt pond” description is replete throughout the Permit, the Commissioners instructed staff to include the statement that “*BCDC (staff) believes that this is a former salt pond*”, and the Permit was issued without pressing the point or resolving the underlying factual issues. The new language “the Commission finds that the parcel...satisfies the criteria for...” remains factually unsupported, is untrue [the Commission indeed has made no such finding], and is misleading. The original language must be retained without amendment.

Westpoint Harbor has agreed to date to not raise this issue as long as this original language remains, because staff has stated that it’s not prepared to address the issue. It is nonetheless important, however, to reiterate that this site was never used as a salt pond, and staff received information and photographs of the history of uses at this site. An Army Corps of Engineers jurisdictional determination, San Mateo County tax records, Redwood City historical records and testimony by prior owners all clearly show that the Westpoint Harbor site was used for ship-building, chemical storage and other heavy industrial uses, but never as a “salt pond”.

Lastly, the quotation in the Permit on page 22, that “*Cargill used the pond for desalting and other purposes...and to allow more salt to precipitate out of the liquid*” is a misstatement. Cargill wrote of the Westpoint Harbor site that “Pond 10 has been used as a multipurpose



pond, often to accumulate bittern from the operations in Redwood City by Cargill Salt and its predecessor Leslie Salt since 1946". In fact, there was never even the means to make or extract salt from this location, because the harvesting system did not extend to pond 10. We hope that these clarifying comments provide a suitable basis for annotating the text of the Permit (Amendment #5), ensuring that past misunderstandings are eliminated, and future misinterpretation can be avoided. Please call if you have questions regarding the foregoing notes.

The Permit, once edited as noted above, should be ready for full execution by Westpoint Harbor.